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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of

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**Amendment of the Commission's Rules
Regarding a Plan for Sharing
the Costs of Microwave Relocation**

)
) **WT Docket No. 95-157**
) **RM-8643**
)

To: The Commission

PETITION FOR RECONSIDERATION/CLARIFICATION

Pursuant to Section 1.429 of the Federal Communications Commission's (Commission) Rules, UTC, The Telecommunications Association (UTC), hereby urges the Commission to clarify particular aspects of its *First Report and Order (FR&O)* in the above-referenced docket. UTC's comments pertain solely to the changes adopted by the Commission to the transition rules for the 2 GHz band. Specifically, UTC urges clarification with respect to two issues: (1) that, in evaluating "communications throughput" to determine "comparability" of replacement facilities, incumbents may request capacity equal to demonstrated actual and anticipated needs; and (2) that the ten year sunset provision on relocation obligations be eliminated or, alternatively, the ten year period begin on the date that the last voluntary negotiation period begins for a particular emerging technology service.

As the national representative on communications matters for the nation's electric, gas, water and steam utilities, and natural gas pipelines -- many of which operate 2 GHz microwave systems -- UTC has actively participated in this docket. UTC's goal is to

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ensure that the emergence of Personal Communications Services (PCS) and other services in the 2 GHz band does not adversely affect the vital fixed microwave operations already existing in this band. UTC generally supports the Commission's efforts in this regard; the Commission has done a commendable job in balancing the rights of incumbents with those of PCS providers. However, the Commission should adopt the clarifications requested by UTC to ensure that the public safety/public service operations of UTC's members are not jeopardized by the Commission's modified transition rules.

I. Incumbents Should Be Permitted to Request Communications Throughput Based on Demonstrated Actual And Anticipated Needs

The Commission's Rules, as adopted in the *FR&O*, delineate three parameters for determining comparability: (1) throughput; (2) reliability; and (3) operating costs. While UTC agrees with the use of these three factors to determine whether a replacement system is comparable, UTC is concerned that the Commission's statements regarding the determination of throughput comparability may threaten utility and pipeline communications systems.

In the *FR&O*, the Commission concluded that "during involuntary relocation, PCS licensees will only be required to provide incumbents with enough throughput to satisfy their needs at the time of relocation, rather than to match the overall capacity of the system ..."¹ The Commission noted that this policy may affect the ability of incumbents to increase their capacity over time, but that that spectrum could not "automatically" be held

¹ *FR&O*, ¶29.

in reserve because "some" incumbents may require additional capacity in the future.² UTC agrees with the Commission that spectrum need not be reserved when there is no demonstrated actual or foreseeable need. However, UTC strongly urges the Commission not to adopt an overly-simplistic policy regarding this matter. Many utilities and pipelines design systems with sufficient capacity to accommodate expected traffic growth, and need replacement facilities with similar capacity.

Utilities and pipelines have seen significant growth in communications needs in recent years. Data communications usage of internal systems to support new and advanced core business services has placed a burden on all communications systems. New and innovative load management and demand-side management applications and other core business applications, such as remote meter reading, dramatically increase the amount of traffic carried on a utility or pipeline system. Moreover, new government regulations, including Federal Energy Regulatory Commission (FERC) Order Nos. 636, 888 and 889, mandate additional responsibilities for utilities and pipelines which must be met through additional communications capacity.³ Also, evolving environmental and workplace safety regulations will likely impose even more communications requirements on utilities and pipelines.

² *FR&O*, ¶29.

³ FERC Order No. 888, for example, heralds the beginning of competition in the electric industry which will likely require extensive communications facilities to ensure proper coordination of electric loads and for other purposes. Additionally, FERC Order No. 889 requires utilities to provide access to information systems to other utilities.

In order ensure that utilities and pipelines have sufficient spectrum to meet their anticipated needs, UTC strongly urges the Commission to require PCS licensees to relocate incumbents to facilities which can meet demonstrable current and anticipated needs. A PCS licensee should be required to provide an incumbent with a replacement system having capacity equal or superior to the capacity of the 2 GHz system, if the incumbent can demonstrate a need for this capacity based on the past growth of its communications traffic or loading, anticipated core business applications or other factors. Because this additional capacity would not be "automatic" but would be based on demonstrable need, it would result in the efficient use of the spectrum. It would also reduce the burden on the Commission that would otherwise be associated with the applications for additional spectrum by these incumbents. The clarification strikes an equitable balance between preventing unnecessary hardship on incumbents and ensuring an efficient use of the spectrum.

UTC's proposed clarification is consistent with the Commission's proposed rules for the relocation of incumbents from the 800 MHz band. In its *Second Further Notice of Proposed Rule Making (SFNPRM)* in PR Docket No. 93-144⁴, the Commission proposes rules for the relocation of incumbents in the upper 200 800 MHz channels which are strikingly similar to those proposed in this docket and its predecessor, ET Docket No. 92-9. As in this proceeding, the Commission proposes in PR Docket No. 93-144 to adopt

⁴ Also captioned as RM-8117, RM-8030, RM-8029. GN Docket No. 93-252, PP Docket No. 93-253 (released December 15, 1995).

guidelines for determining "comparable facilities" and explicitly references as one of the characteristics of comparability that the relocated incumbent "receive the same number of channels with the same bandwidth."⁵ The Commission should recognize the need for sufficient capacity in replacement 2 GHz systems, as it has in its proposals for 800 MHz replacement systems. UTC therefore urges the Commission to adopt its proposed clarification.

II. The Ten Year Sunset Should Be Eliminated Or, Alternatively, Should Not Begin Until The Last Voluntary Negotiation Period Begins For A Specific Emerging Technology Service

The Commission adopted a ten-year limit on the relocation obligations of PCS and other emerging technology licenses, reasoning that "ten years provides incumbents with sufficient time (1) to negotiate a relocation agreement and (2) to plan for relocation themselves."⁶ The Commission then established this date at ten years after the voluntary period begins for the first emerging technology licenses in service. For Broadband PCS, the sunset date was therefore set for April 4, 2005, ten years after the voluntary period began for the A and B Block licensees.

UTC continues to believe that no sunset date should be established and urges the Commission to reconsider this issue. Alternatively, if the sunset provision is retained, UTC recommends that the full ten year period be afforded to all incumbents by beginning the ten year period on the date the *last* voluntary period begins for a specific emerging

⁵ *SFNPRM*, ¶124.

⁶ *FR&O*, ¶66 (footnote omitted).

technology service. As the Commission's rule currently stands, the incumbents affected by subsequent emerging technology licenses will be penalized by having less time to negotiate until they are forced to relocate themselves. In the case of PCS, those incumbents operating in the D, E and F frequency bands may have substantially less than ten years to negotiate before the sunset date arrives. Moreover, for future emerging technology services, the time lapse between the first and last voluntary periods may be even greater than they are expected to be for PCS. Equity requires that all incumbents be afforded the same opportunity to negotiate; those affected by later emerging technology licensees must not be punished by actions (such as delays in the licensing process) outside of their control.

Conclusion

UTC commends the Commission for its efforts to balance the needs of both incumbents and emerging technology licensees in the 2 GHz band. While UTC is hopeful that the lengthy rulemaking process surrounding the transition rules is coming to an end, UTC requests the Commission to make two clarifications to its *FR&O* before laying these rules to rest: (1) in evaluating "communications throughput" to determine "comparability" of replacement facilities, the Commission should clarify that incumbents may request capacity equal to their demonstrated actual and anticipated needs; and (2) the Commission should eliminate the ten year sunset provision on relocation obligations or, alternatively, clarify that the ten year period begins on the date that the last voluntary negotiation period starts for a particular emerging technology service

WHEREFORE, THE PREMISES CONSIDERED, UTC requests the Federal Communications Commission to clarify its *First Report and Order* in accordance with the views expressed in these comments.

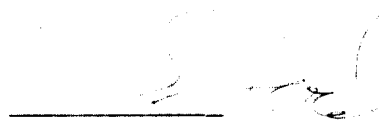
Respectfully submitted,

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